IN THE HIGH COURT OF JUDICATURE AT BOMBY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7005 OF 2006

Patricia Joan Rain - Wiffin & Ors. .....Petitioners.

V/s

The State of Maharashtra & Ors. .....
Respondents.

Mr. J.P. Cama, for Petitioners.

Ms. Jyoti Pawar, Additional Government Pleader, for Respondent Nos. 1 and 2.

CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : **OCTOBER 19, 2006**

P.C.

1. The primary relief claimed in the Petition is that the Family court which is seized of the adoption matters should take decision within a reasonable time. We find that no objection can be made to this proposal and accordingly we direct the Family Court to take decision within two months from today. As the Petitioners have also claimed interim relief we narrate the facts which are relevant to this matter.

2. Petitioner Nos. 1, 3, 4 and 5 have filed applications

before the Family Court, Pune under section 7 of the Guardians and Wards Act, 1890 and Petitioner No.2 has filed an application before the District Court at Pune under section 9 of the Hindu Adoption and Maintenance Act, 1956. It is the case of the Petitioners that despite the fact that the applications filed by the Petitioners are pending in some cases since April 2006, no decision has been taken so far by the Family Court. It has also been pointed out that the children who have been identified for adoption have already met their foster parents and in some cases have developed an affinity with them and, as such, it would be appropriate that pending the disposal of the applications before the Family court that the children should be given to the care of the adoptive parents.

3. We have heard the learned Counsel for the parties. We find that in an almost identical matter this Court while disposing of Misc. Petition No. 517 of 1985 in the case of Joseph Kalloor Cheeky Josey had laid down certain conditions before giving the children in the care of the adoptive parents. We reproduce these conditions hereinbelow:-

"(1) The agency or the institution shall ensure before placement in foster care that the foster parents are desirous of taking the child either in adoption or guardianship after determination of their suitability.

(2) The agency or institution shall carry out a home study report and ascertain the suitability with particular reference to the health, social and financial status of the foster parents, before placement of the child in foster care.

(3) The agency or the institution placing the child in foster care shall secure an undertaking from the foster parents that proceedings for adoption or legalisation would be adopted within a period of four months from the date of placement. In case the proceedings are not adopted without any valid reason then the institution or agency shall withdraw the child from foster

parents.

(4) The agency, institution or the foster parents who apply for guardianship or legalisation shall annexe the copy of the agreement entered into at the time of placement of the child in foster care, to the petition which would be lodged in their Court.

(5) The agency or the institution shall ensure that the foster parent does not remove the child outside the jurisdiction of this Court before an order of legalisation or adoption is passed.

(6) The agency or the institution shall not place the child in foster care with foster parents who are not ordinarily residing in the State of Maharashtra."

Mr. Cama, the learned Counsel appearing on behalf of the Petitioners states that Point Nos. 1 to 5 above have already been complied with by the Petitioners and the undertaking

on point No.6 above will be complied with by tomorrow i.e. 20th October, 2006 before the Family Court/District Court, Pune which is seized of the matter though the undertaking should be modified to the extent that at least one of the foster parents would remain in the State of Maharashtra till the matter was finally decided by the Family Court. We accept this suggestion and modify clause (6) to that extent. We accordingly direct that in case the aforesaid conditions are complied with, the children will be released to the care of their foster parents forthwith pending final decision by the Family Court.

Petition is disposed of accordingly.

All concerned to act on the copy of this order duly authenticated by the registry.

CHIEF JUSTICE

V.M. KANADE, J.